

**JUDGE KARAS**

**14 CV**

**3238**

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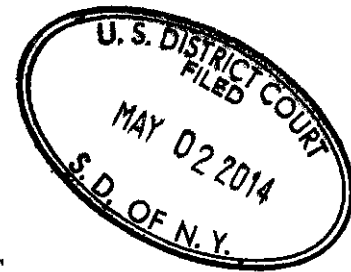
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

GLENN SKIDMORE,

Docket No.

Plaintiff,

**COMPLAINT**



BANK OF AMERICA, N.A., A/K/A BAC  
HOME LOANS, THE BANK OF NEW YORK,  
TRUSTEE, CWALT ALTERNATIVE LOAN  
TRUST 2005-84,

**Jury Trial Requested**

Defendant.

Plaintiff, GLENN SKIDMORE, by his undersigned counsel, DAVID M. SCHLACHTER, ESQ.  
of LAW OFFICES OF DAVID M. SCHLACHTER, LLC, for his Complaint alleges, upon  
personal knowledge as to himself and his own acts and upon information and belief as to all  
other matters, as follows:

**NATURE OF ACTION**

1. This matter is an Action for Quiet Title, fraud, wrongful action, wrongful indebtedness and conversion of real property, wrongful collection on a mortgage, slander of title, slander of credit, unjust enrichment and other rights and remedies against Defendants, who have fraudulently asserted possessory interests in the debt obligations securing the Plaintiff's real property, induced the Plaintiff to rely on the fraudulent assertions, induced Plaintiff to pay their mortgage debt obligations to parties who have no cognizable claim to those debts, induced

Plaintiff to sign Loan terms against Plaintiff's best interests, have subjected Plaintiff to fraudulent debt obligations while remaining liable for legitimate debt obligations securing their real property, and unjustly enriching the Defendants as a direct consequence of the Defendants' fraudulent assertions.

2. Plaintiff is an individual who resides at 2544 Corte Del Morques, Walnut Creek, CA 94958.

3. Upon information and belief, Defendant BAC Home Loans ("BOA") is a bank and/or servicer with its principal office located at 100 N Tryon St #170, Charlotte, NC 28202.

4. The Bank of New York Mellon ("Bank of New York") is a bank and Trustee and has its principal offices located at One Wall Street, New York, New York 10286.

5. The crux of the cause of action derives from the actions taken by Defendants who do not both have proper ownership of the Note and Mortgage on the subject property and yet still used the Court system in Hawaii to wrongfully foreclose and obtain the title to the property.

### **JURISDICTION AND VENUE**

6. Plaintiff brings this matter to the United States District Court based upon 28 U.S.C. Sec. 1332, based on diversity jurisdiction as the Defendants are incorporated and their principal places of business are in different States from Plaintiffs' domicile and the amount in dispute exceeds \$75,000. Venue is proper because Defendant SLS does business in this State.

### **CLAIMS**

7. On or about October 31, 2005, Plaintiff did execute a Note and Mortgage to the subject property of 75-6200 Ho'Okuku Moho Place, Kailua Kona, HI.

8. The Note was to obtain financing in the amount of \$237,600 on an Adjustable Rate Note.

9. The interest rate was 7.125% and had to always be 2.25% above prime.

10. Prime was calculated from the volatile London Based Index known as the LIBOR, which could change as often as four times a month.

11. The interest rate could go up as high as 12.125% but no lower than 7.125% even if prime fell below 4.875%.

12. Prime did fall below 4.875% on or about June 2012 and has stayed below that amount since.

13. Yet, the mortgage has still risen and not dropped in amount.

14. The Note is not indorsed.

15. Plaintiff requested documents from Defendant BOA who claims to still service this loan.

16. Plaintiff received a response on August 15, 2012.

17. In that response the Note was provided, unendorsed.

18. The Mortgage was provided with no assignments.

19. Yet, a private forensic audit done by Plaintiff reveals that Bank of New York Mellon is the actual entity that claims to own the Note and Mortgage on behalf of Defendant Trust.

20. Plaintiff, as a borrower has the right to know the owner of the Note and Mortgage and Defendants acting in concert to mislead Plaintiff is fraud.

21. Plaintiff, then, does not know the correct entity of who to correct the bad mortgage variable rate.

22. Defendants have gone so far as to initiate an action on the mortgage in Hawaii State Court, with Defendant Bank of New York as the Plaintiff in that action.

23. This is an action that may lead to the wrongful conversion of the property.

24. Upon information and belief, the Note and Mortgage was assigned to Defendant Bank of New York as trustee for the Defendant Trust.

25. However, the trust is governed by New York State Law by its own documents and by its location being in New York State.

26. Both the documents and New York State Law require specific language in the indorsements to be valid.

27. Both the documents and New York State Law require the transfer to be within 90 days of closing.

28. The closing date of the Trust was December 1, 2005.

29. As of August 15, 2012 the Note was not yet indorsed.

30. Therefore, the Note was not transferred as of that date.

31. As of August 15, 2012 there was no recorded assignment.

32. Therefore, the Mortgage was not transferred as of that date.

COUNT ONE – Wrongful Collection Practice

33. Plaintiff re-alleges all allegations made thus far.

34. Therefore, Defendants have no rights to enforce collection on the Note or the Mortgage.

Wherefore, Plaintiff seeks an Order of judgment for damages, punitive damages, against Defendant for the wrongful collection and wrongful prosecution of a foreclosure action and for other such relief as this Court seems proper.

COUNT TWO -- Quiet Title

35. Plaintiff re-alleges all allegations made thus far.

36. Therefore, title was never vested in Defendant Bank of New York or the Trust, who claims to have ownership and has initiated such an action in Hawaii.

Wherefore, Plaintiff seeks an Order of Judgment for damages, punitive damages, and special damages against Defendant and an injunctive Order of Quiet Title of the Note and Mortgage, and other such relief as the Court deems proper.

### COUNT THREE – FRAUD

37. Plaintiff re-alleges all allegations made thus far.

38. The interest rate is unpredictable, not with the Truth in Lending Disclosure, and not in compliance with Lending regulation or practice.

39. The Defendants never corrected the amounts owed.

40. Further, Defendants have mislead Plaintiff by failing to provide information about ownership of the Note and Mortgage.

Wherefore, Plaintiff seeks an Order of judgment for damages, punitive damages, against Defendant for the wrongful collection practices, harassment, and fraudulent inducement, and other such relief as this Court deems proper.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment:

- a) Quieting title against Defendants;
- b) Returning possession of the property to Plaintiff;
- c) Expunging the debt obligations and instruments asserted by Defendants against Plaintiff's subject property from the record;
- d) Granting damages to Plaintiff for Defendants' fraud;

- e) Granting damages to Plaintiffs for Defendants unjust enrichment;
- f) Granting punitive damages for the conduct and fraud;
- g) Granting attorney's fees to Plaintiff;
- h) Other relief that this Court deems proper.

**DEMAND FOR A TRIAL BY JURY**

Plaintiff demands a trial by jury.

Dated: New York, New York  
March 25, 2014

By   
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**SUMMONS / COMPLAINT**

This certifies under the Fed. R. Civ. P. that this pleading is not made frivolously under law and it is only made in good faith.

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